No. 80-343

MICHAEL RODAK, JR.

In the Supreme Court of the United States

OCTOBER TERM, 1980

GILBERT LEWIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the district court violated petitioner's Sixth Amendment right to the assistance of counsel by disqualifying his trial counsel.

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The order of the court of appeals (Pet. App. A13-A14) and the opinion of the district court (Pet. App. A1-A12) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 9, 1980. A petition for rehearing was denied on August 4, 1980 (Pet. App. A15). The petition for a writ of certiorari was filed on September 3, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

On April 22, 1980, a federal grand jury in the Eastern District of Pennsylvania filed an indictment charging petitioner and two co-defendants with participating in a fraudulent scheme to obtain bank loans, in violation of 18 U.S.C. 371, 1014, 656 and 215. Prior to trial, the government moved to disqualify petitioner's trial attorney, Gilbert Abramson.[1] Following a hearing, the district court granted the motion to disqualify (Pet. App. A1-A12). The court of appeals affirmed by judgment order (Pet. App. A13-A14).

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[1] The government had previously moved to disqualify Abramson in the course of the grand jury proceedings in this case. Evidentiary hearings on that motion were held before the district court on February 11 and March 11, 1980. Before the court rendered a decision on that motion, however, the grand jury indicted petitioner and his two co-defendants.

1. The pertinent facts, as found by the district court, may be summarized briefly. In 1973, the Spiewak-Lewin Construction Company, a business organization of which petitioner and Joseph Spiewak were each principal officers and 50% shareholders, became a client of the law firm of Eilberg, Corson, Getson and Abramson. Gilbert Abramson represented Spiewak-Lewin in litigation matters; Allan Getson, his partner, handled the Company's corporate affairs (Tr. 8-9).[2] In 1976 and 1977, petitioner, along with Spiewak and one Edward Gordon, organized Pine Valley Estates, Inc., a real estate enterprise formed to build homes in the Philadelphia area (Tr. 9-10). The Eilberg firm was retained to represent the principals of Pine Valley in organizational and related corporate matters. During this period of time, Abramson spoke with petitioner on many occasions concerning litigation matters affecting Spiewak-Lewin. Abramson also discussed the company's business with Spiewak on several occasions (Tr. 70-77).

In mid-1977, Abramson severed his relationship with the Eilberg firm. Lewin withdrew as a client of the firm and took his legal business as well as various Spiewak-Lewin matters to Abramson. Following Abramson's departure from the firm, his former firm filed suit against him to settle a dispute regarding the proper division of legal fees generated by, *inter alia*, the previous Spiewak-Lewin representation (Tr. 10-13).

The present indictment centers around certain activities of the three organizers of the Pine Valley enterprise and two employees of the Frankford Trust Company. The defendants are charged with making

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[2] Transcript references are to the hearing of March 11, 1980.

a fraudulent attempt to secure loans for Pine Valley from Frankford. The indictment alleges that petitioner and his Pine Valley partners, Spiewak and Gordon, conspired with two bank employees to obtain the loans by concealing certain crucial information from the bank. As a part of the overall plan, petitioner allegedly paid unlawful fees to the bank employees for their cooperation. In addition, petitioner submitted false vouchers for construction expenses to the bank in an effort to justify inflated loan requests. The government expects to prove at trial, for example, that petitioner attempted to obtain a false bill for legal services from the Eilberg firm in order to justify one of the false vouchers submitted to the bank (Tr. 14-17).

Only petitioner and the two bank employees were named as defendants in the indictment. Spiewak and Gordon received grants of immunity, and the government expects to call both as prosecution witnesses at trial (Tr. 17). The government also expects to call Getson, Abramson's former law partner in the Eilberg firm, as a prosecution witness.

2. In light of these facts, the district court concluded that Abramson could not properly continue to represent petitioner in the criminal case. First, the court found (Pet. App. A4-A7) that Abramson's past representation of Spiewak-Lewin,[3] together with his former firm's representation of Spiewak, Lewin, Gordon and Pine Valley, made it probable that confidential communications would be revealed in any properly vigorous cross-examination of immunized

[3] The court concluded (Pet. App. A6) that Abramson's representation of the Spiewak-Lewin corporation could not easily be separated from the affairs of its two 50% shareholders.

government witnesses Spiewak and Gordon. The court next found (Pet. App. A7-A9) that Abramson's alleged personal knowledge of the details of various incidents relevant to matters charged in the indictment created a possibility that he might be called as a witness either for the defense or for the government. Finally, the court concluded (Pet. App. A9-A10) that Abramson's personal interest in the outcome of the related fees dispute with his former partner Getson and his alleged personal animosity towards his former colleague might affect his independent judgment in representing petitioner, particularly with regard to the possible cross-examination of Getson, a likely prosecution witness. After considering these factors,[4] the district court disqualified Abramson from representing petitioner at trial.

ARGUMENT

Petitioner contends that the district court's disqualification order contravenes what he terms (Pet. 8) his "absolute" right to proceed at trial with counsel of his choice.[5] As explained below, however, a

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[4] The district court also noted (Pet. App. A10) that a failure on its part to act at this juncture would create the possibility that any future final judgment would be subject to attack on grounds of ineffective assistance of counsel. The court further stated (*ibid.*) that disqualification was required so that the "confidence of the people in the criminal justice system" would not be eroded, and to avoid the potential for deliberate abuse inhering in such situations, whereby "defendants and their attorneys * * * may seek to avoid disqualification in cases of conflict of interest in the hope of later seeking reversal of a conviction or withdrawal of a guilty plea."

[5] There may be some question whether the order granting the motion to disqualify petitioner's counsel is a collateral

defendant's selection of a lawyer to represent him is subject to reasonable restrictions respecting the lawyer's qualifications and compliance with applicable ethical standards. Moreover, there is no indication here that the present and former clients of petitioner's lawyer and his law firm whose interests may conflict with those of petitioner have consented to Abramson's representation of petitioner. Therefore, even if several consenting clients have a right to be repre-

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order appealable under 28 U.S.C. 1291. The issue whether an order *denying* disqualification is appealable has divided the circuits and is now before the Court in *In re Multi-Piece Rim Products Liability Litigation, Firestone Tire & Rubber Co.* v. *Risjord*, No. 79-1420 (argued Nov. 12, 1980). The courts of appeals that have held orders denying disqualification not to be appealable have not yet taken issue with the appealability of orders *granting* disqualification. See, *e.g.*, *Armstrong* v. *McAlpin*, 625 F.2d 433, 440-441 (2d Cir. 1980) (en banc), cert. pending, No. 80-431 (filed Sept. 18, 1980); *In re Multi-Piece Rim Products Liability Litigation, Firestone Tire & Rubber Co.* v. *Risjord*, 612 F.2d 377, 378 (8th Cir. 1980) (en banc), cert. granted, No. 79-1420 (May 12, 1980); cf. *In re Continental Investment Corp.*, No. 80-1362 (1st Cir. Oct. 31, 1980), slip op. 12; *Melamed* v. *ITT Continental Baking Co.*, 592 F.2d 290, 295 (6th Cir. 1979); *Community Broadcasting of Boston, Inc.* v. *FCC*, 546 F.2d 1023, 1028 n.41 (D.C. Cir. 1976); but see *In re Benjamin*, 582 F.2d 121 (1st Cir. 1978) (order disqualifying counsel representing grand jury witness not immediately appealable; witness must refuse to testify because he was deprived of counsel and seek review of contempt citation). Nonetheless, it could be argued that a defendant's claim that the district court erred in disqualifying his attorney could adequately be reviewed on an appeal from a final judgment of conviction and therefore would not satisfy the third criterion of the collateral order doctrine. See *Coopers & Lybrand* v. *Livesay*, 437 U.S. 463, 468 (1978). We did not raise the issue of appealability in the court of appeals, however, and the Court need not consider it here if it agrees with our contention that the case does not otherwise warrant review.

sented by the same lawyer despite their conflicting interests, this case would not warrant review by the Court. Moreover, aside from the possible conflict of interest in this case, the district court found it possible that petitioner's lawyer would be called as a witness at trial. This furnishes an independent basis for disqualification of an attorney.

1. Petitioner first relies (Pet. 9) on this Court's decision in *Faretta* v. *California*, 422 U.S. 806 (1975), where the Court held that the Sixth Amendment guarantees a criminal defendant the right to conduct his own defense, without the assistance of an attorney. Petitioner argues that the *Faretta* decision suggests that the Sixth Amendment also grants to a defendant who chooses to be assisted by counsel the right to proceed with any attorney he selects, no matter what conflicts of interest or other ethical problems may result from that chosen representation. This argument misreads the nature of the right recognized in *Faretta*.

The decision in *Faretta* is not premised on the existence of a Sixth Amendment right to waive the assistance of counsel, from which a court might infer the companion right petitioner asserts in this case—the right to waive the *effective* assistance of counsel and thereby to insist on an attorney who has a conflict of interest. To the contrary, the Court emphasized in *Faretta* that the right to self-representation could *not* be inferred mechanically from the fact that a defendant possesses the ability to waive his right to the assistance of counsel. 422 U.S. at 820 n.15. As the Court observed, "'[t]he ability to waive a constitutional right does not ordinarily carry with it the right to insist upon the opposite of that right.'" *Id.* at 819 n.15, quoting *Singer* v. *United States*, 380

U.S. 24, 34-35 (1965). Accordingly, although a defendant who knowingly and intelligently consents to joint representation after being fully apprised of the potential for a conflict of interest may later be held to have waived his right to the effective assistance of counsel (even though it turns out that a conflict of interest developed), it does not follow that a defendant has a *right*, in advance of trial, to insist on a lawyer who is burdened with a conflict of interest.

The right to appear personally, recognized in *Faretta*, is an independent right guaranteed by the Sixth Amendment, which generally confers on the defendant, not his attorney, the right to make a defense. 422 U.S. at 819; see *United States* v. *Dolan*, 570 F.2d 1177, 1183 (3d Cir. 1978). One of the means available to the defendant in making his defense is to invoke the assistance of counsel. When a defendant chooses to be represented by counsel, however, he necessarily does so subject to reasonable standards governing the qualifications and conduct of counsel (*United States* v. *Dinitz*, 424 U.S. 600 (1976)), including ethical standards necessary to preserve the fairness and integrity of the administration of justice and the appearance of such fairness and integrity. This is but a particular application of the general rule that the trial of criminal cases may properly be subject to reasonable rules of procedure, including those affecting the invocation of constitutional rights. Cf. *Davis* v. *United States*, 411 U.S. 233 (1973). For example, it scarcely could be contended that a defendant has an absolute constitutional right to be represented by a lay person, a disbarred lawyer, or even a lawyer licensed in another jurisdiction. Cf. *Leis* v. *Flynt*, 439 U.S. 438 (1979). Nor, we think, may he insist on being defended by

a lawyer who is a co-defendant or a charged co-conspirator in the case. Although these may seem to be extreme examples, they underscore the fallacy in petitioner's assertion of an absolute right to counsel of his choice.

Thus, although a court should not lightly interfere with a defendant's selection of a particular lawyer to represent him, the Sixth Amendment permits reasonable regulation of the practice of law designed to ensure that those appearing as officers of the court possess the necessary qualifications and familiarity with local procedures and to prevent against conflicts of interest or other ethical violations. It must be remembered that conflicts of interest affect more than the individual lawyer's immediate client. There is a compelling *public* interest in ensuring that attorneys who appear as officers of the court and participate in the administration of the criminal justice system are not burdened with conflicting loyalties to the clients they represent. In furtherance of this public interest, established ethical norms for attorneys provide that a lawyer should not represent several clients in the same case unless all consent *and* it is "obvious" or "clear" that the attorney can adequately represent the interests of each. *ABA Code of Professional Responsibility* DR 5-105, EC 5-15 (1978), cited in *Cuyler* v. *Sullivan*, No. 78-1832 (May 12, 1980), slip op. 11 n.11; *ABA Standards Relating to the Administration of Justice, The Defense Function* § 3.5(b) (App. Draft 1971).

These established ethical standards presuppose that there will be situations in which it would be improper, because of a conflict of interest, for a lawyer to represent several defendants, even if they consent to that representation. If the lawyer none-

theless proceeds with the multiple representation in the face of a clear conflict of interest, he would be subject to disciplinary action by the bar or the court. And yet, under petitioner's notion of an absolute Sixth Amendment right to counsel of one's choice, the trial court would be unable to exercise its supervisory power over members of the bar appearing before it (see *United States* v. *Payner*, No. 78-1729 (June 23, 1980), slip op. 7-8 n.7) by disqualifying the lawyer. We cannot believe that the Sixth Amendment requires the trial court to stand by while the integrity of the bar and the administration of justice are so seriously undermined.

As the Advisory Committee Note accompanying proposed Fed. R. Crim. P. 44(c) states, quoting *United States* v. *Dolan*, *supra*, 570 F.2d at 1184:

> [W]hen a trial court finds an actual conflict of interest * * *, the court should not be required to tolerate an inadequate representation of a defendant. Such representation not only constitutes a breach of professional ethics and invites disrespect for the integrity of the court, but it is also detrimental to the independent interest of the trial judge to be free from future attacks over the adequacy of the waiver or the fairness of the proceedings in his own court and the subtle problems implicating the defendant's comprehension of the waiver. Under such circumstances, the court can elect to exercise its supervisory authority over members of the bar to enforce the ethical standard requiring an attorney to decline multiple representation.

Moreover, proposed Rule 44(c) provides, with respect to joint representation, that unless there is good cause to believe that no conflict of interest is likely to arise, "the court shall take such measures as may be appropriate to protect each defendant's

right to counsel." The Advisory Committee Note makes clear, in the passage just quoted, that under the proposed rule the court could disqualify counsel in appropriate circumstances even though the defendants have consented to joint representation. Therefore, in promulgating proposed Rule 44(c), this Court appears implicitly to have rejected petitioner's argument that there is an absolute Sixth Amendment right to counsel of one's choice, irrespective of conflicts of interest. Cf. *United States* v. *Burton*, 584 F.2d 485, 489 (D.C. Cir. 1978), cert. denied, 439 U.S. 1069 (1979).

2. In the present case, attorney Abramson is not confronted with a possible conflict of interest resulting from joint representation of several defendants, the situation to which proposed Rule 44(c) is specifically addressed. Instead, the conflict arises because of the prior representation by Abramson and his law firm of two companies owned by petitioner together with prosecution witnesses, and their representation of petitioner and the witnesses individually However, much the same potential for a conflict of interest arises in this setting as where the same lawyer simultaneously represents two defendants. Thus, in the present case, in order to respect the confidentiality of information obtained in the course of representing the prosecution witness and to maintain his duty of loyalty to that witness with respect to matters relating to the earlier representation, the lawyer may be forced to limit his cross-examination of the witness to the detriment of the defendant.[6] There is no indi-

[6] Petitioner contends (Pet. 12-16) that the trial court erred in finding a conflict of interest in this setting because, as a matter of Pennsylvania law, any communications Abramson may have had with Spiewak would not be privileged from

cation that the former clients of Abramson and his firm—Spiewak, Gordon, Spiewak-Lewin, and Pine

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disclosure; he suggests that disqualification of Abramson in order to prevent him from exploiting these communications was therefore inappropriate. This argument fails for several reasons.

First, a federal district court, in exercising its supervisory power over attorneys appearing before it, is not bound by the provisions of state law, particularly in federal criminal prosecutions, for which procedural uniformity is essential. Cf. proposed Fed. R. Crim. P. 44(c), *supra*.

Second, the state cases relied upon by petitioner would not support his position, even if applicable. *Cohen* v. *Jenkintown Cab Co.*, 238 Pa. Super. 456, 357 A.2d 689 (1976), concerned the scope of the evidentiary privilege for attorney-client communications. However, the scope of this *evidentiary* privilege from *compelled* disclosure is narrower than the attorney's duty not to disclose or exploit confidential information *voluntarily* to his own advantage or that of another client. See DR 4-101(A) and (B). In *Jenkintown Cab*, moreover, the court found that it was impossible that the attorney's testimony would affect the client's interests, because the client was dead and his heirs could suffer no injury, the testimony would not affect the client's reputation, the substance of the testimony had already been revealed in a prior deposition, and disclosure was necessary to prevent an unjust result in the litigation. Clearly, no similar considerations are present in the instant case.

The second case upon which petitioner relies, *Seifert* v. *Dumatic Industries, Inc.*, 413 Pa. 395, 197 A.2d 454 (1964), involved a motion to disqualify counsel in "unique circumstances" where there existed "no possibility of a conflict of interest." 413 Pa. at 399, 197 A.2d at 456. The court, while generally reaffirming the sanctity of confidential attorney-client communications (413 Pa. at 398 n.2; 197 A.2d at 455 n.2), simply found, on the facts presented, no risk of improper disclosure. 413 Pa. at 400-401 n.7; 197 A.2d at 457 n.7. *Seifert* thus hardly stands for the proposition that a later court is prohibited under Pennsylvania law from determining, on the facts before it, that a real threat to client confidences does in fact exist.

Valley Estates—affirmatively waived their right to maintain the confidentiality of whatever information may have been imparted to Abramson or his partners or that they waived the lawyer's duty of loyalty with respect to matters involved in the previous representation. DR 4-101(C), DR 5-105. Under these circumstances, the district court did not abuse its discretion in disqualifying Abramson. *United States* v. *Vargas-Martinez*, 569 F.2d 1102, 1104 (9th Cir. 1978); compare *United States* v. *Partin*, 601 F.2d 1000, 1009 (9th Cir. 1979), cert. denied, No. 79-646 (May 27, 1980).[7]

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[7] Petitioner suggests (Pet. 13) that the district court erred in disqualifying Abramson because the government did not prove precisely what information had been imparted to Abramson in the course of the prior representation. Petitioner misconceives the applicable rules in this area. First, disqualification does not turn solely on what information Spiewak gave directly to Abramson, as petitioner seems to believe (Pet. 12-13). Other members of the Eilberg firm represented Pine Valley and its principals, including Spiewak and Gordon, while Abramson was a member of the law firm (Pet. App. A6). There is a presumption that all members of the law firm, including Abramson, were privy to information obtained by any one of them. *Novo Terapeutisk Laboratorium* v. *Baxter Travenol Laboratories, Inc.*, 607 F.2d 186, 196-197 (7th Cir. 1979) (en banc); *Gas-A-Tron* v. *Union Oil Co.*, 534 F.2d 1322, 1325 (9th Cir.), cert. denied, 429 U.S. 861 (1976); *Silver Chrysler Plymouth, Inc.* v. *Chrysler Motors Corp.*, 518 F.2d 751, 757 (2d Cir. 1975). Thus, Abramson may properly be charged with possession of confidential information given to his associates by Spiewak and Gordon, unless the court affirmatively finds an absence of communication with him respecting these confidences.

Second, in order to require disqualification of an attorney in a case such as this, it is only necessary to show a "substantial relationship" between the lawyer's (or his firm's) earlier representation and the matter in which his disquali-

Of course, quite aside from the problems posed by Abramson's and the firm's earlier representation of government witnesses and affected corporations, the district court also concluded that Abramson should be disqualified because of the government's assertion that he has personal knowledge about some matters relevant to the indictment, including an attempt to obtain false vouchers for legal services purportedly performed by the Eilberg firm, which were used to obtain a larger loan from the Frankford Trust Company. As a result, it is possible that Abramson would be called as a witness by either the prosecution or the defense. As the district court noted (Pet. App. A7-A8), an attorney ordinarily is expected to withdraw

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fication is sought, such that there is a reasonable possibility that he may be able to utilize confidential information obtained in the course of the earlier representation to the detriment of the former client. See, *e.g.*, *Musicus* v. *Westinghouse Electric Co.*, 621 F.2d 742 (5th Cir. 1980); *Trone* v. *Smith*, 621 F.2d 994 (9th Cir. 1980); *Fund of Funds, Ltd.* v. *Arthur Andersen & Co.*, 567 F.2d 225, 235 (2d Cir. 1977). To require more—*i.e.*, a showing of what confidences actually were disclosed—would expose the very attorney-client confidences that it is the purpose of the disqualification rule to protect. See, *e.g.*, *Trone* v. *Smith*, *supra*; *Westinghouse Electric Corp.* v. *Gulf Oil Corp.*, 588 F.2d 221, 224 (7th Cir. 1978). Here, there would seem to be the requisite "substantial relationship" between Abramson's and his law firm's representation of Spiewak-Lewin, Pine Valley, and their principals on the one hand, and the criminal charges against petitioner on the other. In these circumstances, a searching inquiry into the nature of the confidential information imparted to Abramson and other members of the Eilberg firm on behalf of the two corporations and their principals is unnecessary. And, at least in the absence of an affirmative showing of a waiver of disqualification by the corporations and their principals, disqualification of Abramson would appear to be in order.

if he may become a witness in the case. DR 5-102; cf. *United States* v. *Nobles*, 422 U.S. 225, 252-253 (1975) (White, J., concurring); *Hickman* v. *Taylor*, 329 U.S. 495, 517 (1947) (Jackson, J., concurring); *United States* v. *Birdman*, 602 F.2d 547, 552-553 & n.14 (3d Cir. 1979), cert. denied, 444 U.S. 1032 (1980), and cases cited. Because the rule against a lawyer's being a witness in his own case is well recognized, its application to the facts of this case does not warrant review by the Court.

Finally, the court concluded that disqualification was warranted because Abramson was involved in a dispute over division of legal fees (derived in part from work for Spiewak-Lewin) with Getson, his former partner and a prosecution witness. The district court found (Pet. App. A9-A10) that this dispute might affect Abramson's independent judgment on behalf of petitioner. We have some doubt about this ground for disqualification, standing alone, in view of the somewhat speculative nature of the suggested effect on Abramson and the deference that ordinarily should be shown to a defendant's choice of counsel. The fee dispute becomes more significant, however, because it in part concerns fees for representation of Spiewak-Lewin. This underscores the degree to which Abramson, through his former law firm, is personally enmeshed in matters relating to prosecution witnesses and corporations involved in this criminal case. Viewed in this light, the fees dispute, when coupled with the other factors, reinforces the district court's order of disqualification.

3. Petitioner argues, however, that the decision below conflicts with decisions of several other courts of appeals holding that a defendant has a Sixth Amendment right to proceed with counsel who has a

conflict of interest. In *United States* v. *Garcia*, 517 F.2d 272 (5th Cir. 1975), for example, the court held, relying on *Faretta* v. *California*, *supra*, that a defendant has a Sixth Amendment right to insist upon an attorney with otherwise disqualifying conflicts if he waives his right to effective assistance of counsel. See also *United States* v. *Mahar*, 550 F.2d 1005, 1007-1008 (5th Cir. 1977). The Fourth Circuit suggested its agreement with *Garcia* in *United States* v. *Duklewski*, 567 F.2d 255 (1977), without further analysis. The Second Circuit reached a similar result in *United States* v. *Armedo-Sarmiento*, 524 F.2d 591 (1975), also relying principally on *Faretta* and *Garcia*, with little additional analysis. See also *Kaplan* v. *Bombard*, 573 F.2d 708, 714 (2d Cir. 1978). But see *Abraham* v. *United States*, 549 F.2d 236, 239 (2d Cir. 1977) ("defendants are not entitled to joint representation as a matter of right"); *United States* v. *Vargas-Martinez*, *supra*; *United States* v. *Burton*, *supra*.

The asserted conflict with these cases does not warrant review by this Court.[8] This is not merely a

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[8] As we have explained (see pages 6-10, *supra*), the decisions upon which petitioner relies are in error to the extent they interpret the Sixth Amendment and this Court's decision in *Faretta* to prohibit a court from disqualifying a lawyer where there is a substantial risk that the lawyer would have an actual conflict of interest. If these courts persist in their view after proposed Fed. R. Crim. P. 44(c) goes into affect, and despite this Court's observations in *Cuyler* v. *Sullivan*, *supra*, slip op. 11 n.11, regarding the ethical problems inherent in multiple representation, review by this Court might be warranted in an appropriate case at a later date. But review of the present case is not warranted for the reasons given in the text.

situation of a possible conflict of interest among several clients, as in the cases upon which petitioner relies. The district court also found that disqualification was appropriate because Abramson might be called as a witness. This furnishes an independent ground for disqualification designed to protect the integrity of the judicial system, without regard to any conflict of interest. The Fifth Circuit, notwithstanding its *Garcia* decision dealing with joint representation, has held that the Sixth Amendment does not prohibit disqualification where necessary to ensure "the fair and orderly administration of justice." *United States* v. *Salinas*, 618 F.2d 1092, 1093 (5th Cir. 1980); see also *United States* v. *Kitchin*, 592 F.2d 900, 903 (5th Cir.), cert. denied, 444 U.S. 843 (1979); *United States* v. *Dinitz*, 538 F.2d 1214, 1219 (5th Cir.) (en hanc), on remand from 424 U.S. 600 (1976). There is no reason to believe that the Second and Fourth Circuits would not agree with the Fifth Circuit that disqualification may be appropriate where it is ordered for reasons that are independent of the attorney's relationship with his clients. Thus, it does not appear that the instant case, in which disqualification was ordered in substantial part to ensure the integrity of the judicial process by preventing the possibility that defense counsel might be called as a witness, would have been decided differently by any other circuit.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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